

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D25290
H/kmg

_____AD3d_____

Submitted - October 28, 2009

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2005-05321

DECISION & ORDER

The People, etc., respondent,
v James Murray, appellant.

(Ind. No. 121/03)

Craig S. Leeds, New York, N.Y., for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Solomon Neubort of counsel; Isaac Silverstein on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Gerges, J.), rendered December 7, 2004, convicting him of conspiracy in the second degree and criminal sale of a controlled substance in the third degree, upon his plea of guilty, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the People's contention, the defendant's purported waiver of his right to appeal cannot be considered knowing, voluntary, and intelligent, as the defendant was incorrectly informed that his right to appeal did not include the right to appellate review of his sentence on the ground that it was excessive (*see People v Cruz*, 54 AD3d 962, 963; *People v Hurd*, 44 AD3d 791, 792; *People v Caleb C.*, 32 AD3d 543). Accordingly, we have considered the defendant's contention that the sentence imposed was excessive, but find it to be without merit (*see People v Schnoor*, 63

December 8, 2009

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PEOPLE v MURRAY, JAMES

AD3d 760, *lv denied* 12 NY3d 929; *People v De Alvarez*, 59 AD3d 732; *People v Kazepis*, 101 AD2d 816).

RIVERA, J.P., COVELLO, ANGIOLILLO, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court